IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9843 of 1992

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M. DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SAHEBSINH NANABHAI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1 - 4, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8,4.2.9 - 5, 5.2.1, 5.2.2,5.2.3
MS MINI NAIR AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
3rd August, 2007

ORAL JUDGMENT

This petition, preferred under *Article* 227 of the Constitution of India, arises from the judgment and

order dated 28th February, 1992 passed by the Gujarat Revenue Tribunal [hereinafter referred to as, "***the Tribunal***"] in Revision Application No. TEN.B.R.24/89.

The petitioners before this Court are the land holders and their successors-in-title.

The matter arises from the application made by the petitioners nos.1,2 & 3-the holders of the land, for declaration that the transaction entered into by them after 24th January, 1971 and before 1st April, 1976 were *bona fide* transaction made under Section 8 of the Gujarat Agricultural Lands Ceiling Act, 1960 [hereinafter referred to as, "***the Act***"].

Section 6 of the Act provides, *inter alia*, that with effect from the appointed day, no person shall be entitled to hold land in excess of the ceiling area. The word, "***person***" is defined in Clause 21 of Section 2 of the Act as, "***person includes a joint family".*** The words, "***Joint Family***" are defined in clause 16 thereof as "***Joint family means an undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence".*** Sub-section [1] of

Section 8 of the Act [*as amended by Gujarat Act No.2 of 1974*] provides, *inter alia,* that, "***Where after 24th January, 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange, lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition in order to defeat the object of this Act.***" Sub-section [2] thereof provides, *inter alia*, that any person affected by the provisions of sub-section [1] may make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of the amending Act of 1972.

It is the aforesaid sub-section [2] of Section 8 under which the petitioner no.1, the holder of the lands, made application to the Collector. According to the petitioner no.1, in the month of January, 1971, he held certain lands at village-Juna Nagarvas, Morbi, admeasuring 93 Acres – 35 Gunthas, in aggregate. Of the said lands, he had made donation of some 6 Gunthas of land of Survey No. 246-*paiki,* to

one Sanyas Ashram and the remaining land, admeasuring 2 Acres – 4 Gunthas of the said land Survey No. 246-*paiki,* was sold to one-Harbha Dhana Rama on 17th September, 1974. By *Banakhat* dated 23rd May, 1970 he had agreed to sell 24 Acres of land of Survey No.39 to one Shri Ratilal Thakkar, as the guardian of his minor son-Omkarsinh Sahebsinh, the petitioner no.3. Though, the Sale Deed in respect of the said 24 Acres of land was executed on 23rd May, 1974 by the mother of the minor son, the petitioner no.2 as his guardian. The applicant prayed for a declaration that the aforesaid transfers were not made in anticipation to defeat the provisions of the amending Act of 1972. According to the applicant, he and his wife were estranged for several years and were living separately. In the year 1969, arbitration award was made and a decree in the terms of the award was passed by the Civil Court on 27th June, 1972. In consonance with the said arbitration award which was made a decree by Civil Court, the lands were partitioned between him, his wife and the minor son – petitioners nos. 1,2 & 3 herein.

The Deputy Collector believed the say of the

applicant and gave a declaration under Section 8 of the Act that the transaction in question were *bona fide* and were not entered in anticipation to defeat the provisions of the amending Act of 1972. The matter was carried further by the State Government. After three rounds of litigation, by *impugned* judgment and order, the Revenue Tribunal has held that, for the purpose of the Act, the holding of the petitioners nos. 1,2 & 3 who was then a minor should be clubbed together as envisaged by Section 6 of the Act. Considering the recitals made in the Sale Deed dated 23rd May, 1974, executed in favour of the above referred Shri Ratilal Thakkar, the Tribunal held that the said transfer was not *bona fide* and that it was made with a view to defeating the provisions of the Act. The Tribunal upheld the transfer by gift made in favour of Sanyas Ashram but did not approve the partition amongst the holders and the sale of parts of land referred to hereinabove. Therefore, the present petition.

Mr. Hathi has submitted that considering the evidence on record, the Deputy Collector on all the three occasions believed that the applicant and his

wife were estranged and had a separate residence. The Deputy Collector also believed that the sale made in favour of the aforesaid Shri Ratilal Thakkar to be *bona fide*. It was observed that the agreement for sale was made in the year 1970 i.e., before the 24th day of January, 1971 and it could not have been made with a design to defeat the Act. However, the Tribunal had a different view of the matter. Although the Tribunal did believe that the applicant and his wife were estranged and had a separate residence, the Tribunal, relying upon Section 6 of the Act held that irrespective of the circumstances, the holdings of the husband, wife and the minor son were required to be grouped together for the purpose of the Act.

Mr. Hathi has submitted that the approach of the Tribunal is wholly *erroneous*. He has submitted that once it was proved that the applicant and his wife did not reside together as a family and had separate residence, their holdings could not have been grouped as a "*family*". In support thereof,he has relied upon the judgment of this Court in the matter of ***Heirs of Deceased Bhikhabhai L. Patel vs. State of Gujarat*** [1994 (2) GLH 69]. In the said judgment, this

Court held that in such circumstances, the holding of wife could not be clubbed or grouped with that of the *husband* for the purpose of the Act.

Mr. Hathi has also submitted that the revision application preferred by the State Government before the Tribunal was grossly time barred. Such time barred application could not have been entertained by the Tribunal without condoning the delay. As to the condonation of delay, no separate application was made. The action of the Tribunal in condoning the delay while considering the revision application on merits is *vitiated*. In support thereof, he has relied upon the judgment of this Court in the matter of ***Darabsha Sorabji v. State of Gujarat & Ors.*** [2005 (2) GLR 1409]. There, the learned Single Judge has held that, "***..Unless there was application for condonation of delay in filing the Revision late, the delay could not have been condoned by the learned Tribunal. Thus, on this ground alone the petition was required to be allowed.***"

Ms. Nair has contested the petition. She has supported the order of the Tribunal. She has submitted that Section 6 of the Act specifically

provides that, for the purpose of the Act, the holding of the husband, wife and the minor children should be grouped together. In the present case, therefore, the Tribunal has rightly held that the partition amongst the applicant, his wife [*mother of the minor son*] and the minor son should not be taken into consideration for the purpose of the Act. She has submitted that the sale made in the year 1974 did not refer to *Banakhat* executed in the year 1970 or the fact of handing over of possession in the year 1970. The Tribunal has, therefore, rightly held that the said transfer was made with a view to defeating the provisions of the Act. She has next submitted that unless the findings recorded by the Tribunal were *perverse*, this Court would not interfere with the same in exercise of supervisory *jurisdiction* conferred by *Article* 227 of the Constitution. In support of her submissions, she has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***Darshan Prashad & Another vs. Civil Judge II, Gorakhpur & Ors.*** [1992 Supp (2) SCC 87] and in the matter of ***Estralla Rubber v. Dass Estate [P] Limited*** [(2001) 8 SCC 97].

In the matter of **Darshan Prashad & Anr.** [*Supra*], a similar question arose before the *Hon'ble* Supreme Court under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. Under the said Act, the word, "***Family***" in relation to a tenure-holder is defined to mean, "**himself or herself and his wife or her husband, as the case may be [*other than a judicially separated wife or husband*], minor sons and minor daughters [*other than married daughters*].**" Considering this definition, the *Hon'ble* Court held that, "***..unless the husband and wife were judicially separated, as envisaged by the Hindu Marriage Act, 1955, no such land is allowed to be excluded in the case of the wife, even though she might be a separate tenure-holder. ...the land even if owned or possessed by his wife in her own right would have to be included in the land of the husband treating the wife as a member of his family. The only except has been made in the case of a judicially separated wife.***"

In the mater of **Estralla Rubber** [*Supra*], the *Hon'ble* Court has reiterated the scope and ambit of exercise of power and *jurisdiction* by the High Courts under *Article* 227 of the Constitution. It is held

that, ***"..The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is apparent on the face of the record."***

It is true that the revision preferred before the Tribunal was time-barred. The question of limitation was considered by the Tribunal. The Tribunal was of the opinion that the State Government had made out sufficient cause to condone the delay, and had condoned the delay. The question of condoning the delay is the subject matter of subjective satisfaction of the concerned court or tribunal. It

is discretionary *jurisdiction* vested in any court or tribunal. The Tribunal having exercised its discretionary *jurisdiction* to condone the delay and of hearing the revision application on merits, I do not suppose this Court should interfere with the same. I, therefore, reject the contention that the Tribunal could not have condoned the delay or that the revision application should have been dismissed as time barred.

As to the merits, the fact that the applicant and his wife were estranged and were living separately for several years – long before 24th January, 1971; the fact that there was an arbitration award in the year 1969 and that a decree was drawn by the Civil Court in the terms of the said award are not in dispute. Thus, it is proved that the applicant, his wife and the minor son had separate holding. Ordinarily, for the purpose of the Act, such holding should be grouped together as envisaged by Section 6 of the Act but in the instant case, the wife and the minor son were living separately. As held by this Court in the matter of Heirs of Deceased Bhikhabhai L. Patel {Supra}, the applicant and his

wife cannot be said to be a "***Family***", and for the purpose of the Act, their holding should be treated separate and could not have been grouped together as envisaged by Section 6 of the Act. As to the judgment of the *Hon'ble* Supreme Court in the matter of Darshan Prashad [*Supra*], it should be noted that the statutory provision under consideration was not identical to the one under consideration in the present petition i.e., while defining the word "***family***" under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the Legislation has made a specific exception in respect of the separate holding of the husband and wife who were judicially separated. In other words, unless the husband and wife were judicially separated, their holding could not be treated as separate. In the present case, in the definition under consideration, no such exception has been made out. If the husband and wife have actually separated, without there being judicial separation by order of a court of law, their holding can be separate and can be treated as separate. That exactly is the case in the present matter. The authority below as well as the Tribunal have believed

the actual separation of the applicant and his wife. There is no reason, therefore, not to allow the estranged husband and wife to have a separate holding in terms of the decree passed by the Civil Court. I am, therefore, of the view that the Tribunal has grossly erred in not accepting that the applicant and his wife can have a separate holding inspite of their actual separation from each other. The opinion of the Tribunal is contrary to the judgment of this Court in the matter of Heirs of Deceased Bhikabhai L. Patel [*Supra*]. If the partition of the holding of the applicant, in consonance with the decree passed by the Civil Court is believed and the husband and the wife are believed to have separate holding, neither the applicant nor the estranged wife along with the holding of the minor, of whom she was the guardian, held land in excess of the ceiling limit. The subsequent transfer of land, admeasuring 2 Acres 4 Gunthas of Survey No. 246, and the transfer of 24 acres of land Survey No.39 by the petitioner no.2 as guardian of her minor son were not affected by sub-section [1] of Section 8, no declaration as envisaged by Sub-section [2] of Section 8 of the Act was,

therefore, warranted.

In view of the above discussion, the *impugned* judgment and order dated 28th February, 1992 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.R24/89 is *quashed* and set-aside. The Order of the Deputy Collector, Morbi dated 29th October, 1988 made in Ceiling Remand Case No. 1 of 1987 is restored.

Rule is made absolute. The parties shall bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash**